

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts)
For Arbitration of Interconnection Agreements between Competitive) D.T.E. 04-33
Local Exchange Carriers and Commercial Mobile Radio Service)
Providers in Massachusetts Pursuant to Section 252 of the)
Communications Act of 1934, as amended, and the Triennial Review)
Order)

MCI's RESPONSE TO VERIZON's PETITION FOR ARBITRATION

Pursuant to section 252(b)(3) of the Telecommunications Act of 1996 ("Act"), MCImetro Access Transmission Services LLC, Brooks Fiber Communications of Massachusetts, Inc., MCI Worldcom Communications, Inc., MCI Worldcom Communications, Inc. as successor to Rhythms Links Inc., and Intermedia Communications, Inc. (collectively "MCI") hereby file this response to Verizon's Petition for Arbitration, dated February 20, 2004. Verizon has petitioned the Department to arbitrate amendments to its interconnection agreements with MCI (and all other CLECs) proposed by Verizon on October 2, 2003 to implement changes in Verizon's obligations resulting from rules adopted by the Federal Communications Commission ("FCC") in its *Triennial Review Order* ("TRO").

PRELIMINARY MATTERS

As an initial matter, MCI reserves its rights with respect to whether this arbitration process should be conducted on a consolidated basis, as requested by Verizon, and if so, to what extent or degree. Under the Act and the terms of MCI's interconnection agreements with Verizon, MCI is entitled to negotiate a change of law amendment with Verizon with respect to its individual contract and to seek arbitration by the Department of any resulting disputes.

Because of the nature of the *TRO* and the fact that many of MCI's edits to Verizon's proposed amendment are intended to reflect more accurately the FCC's rules, MCI agrees that there may be aspects of this proceeding that might be suitable for consolidated resolution.

In addition, MCI reserves its rights with respect to the position taken by Verizon that the FCC has required that amendments implementing the *TRO* be implemented in accordance with the timeframes set forth in section 252(b) of the Act. Specifically, MCI reserves the right to argue, among other things, that in the *TRO*, the FCC did not mandate that the timing requirements of 252(b) apply to the negotiation of amendments to contracts that contain a change-of-law provision. Although MCI is willing to pursue this proceeding with Verizon at this time, the current state of MCI's negotiations with other incumbent local exchange carriers varies, in part, because of the different change-of-law procedures specified in MCI's contracts with those carriers. MCI reserves the right to argue that the change-of-law provisions in its interconnection agreements, and not the timing requirements under section 252(b), are what govern the process of negotiating and arbitrating amendments to implement the *TRO*.

In revising Verizon's proposed language, MCI has edited the proposed amendment to reflect the *TRO* in its entirety, as it went into effect on October 2, 2003. MCI recognizes the potential for additional changes in light of the recent decision of the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Association v. Federal Communications Commission*, Case No. 00-1012, decided March 2, 2004 ("*USTA II*"), and reserves the right to submit additional edits or changes as part of this proceeding in the event that *USTA II* becomes effective during the course of this proceeding.

Finally, MCI reserves its rights to argue in this proceeding that Verizon has independent obligations under state law and/or section 271 of the Act to provide the network elements that are

the subject of the proposed TRO Attachment and that those obligations should be set forth in the parties' interconnection agreement.

DISCUSSION

As reflected in the detailed discussion below, MCI agrees in principle with much of Verizon's proposed amendment to its interconnection agreements with MCI. MCI does object, however, to certain of Verizon's proposals. Some of MCI's objections can be remedied with minor changes to the phrasing of Verizon's proposed amendment; others require more substantial additions to and/or rewording of Verizon's proposed language. As explained below, the great majority of MCI's proposed revisions involve clarification and elaboration of Verizon's proposed amendment to conform it to the FCC's determinations in the *TRO*, and thus stem from its desire, also expressed by Verizon, to "ensure that existing agreements are comprehensively modified to bring them into accordance with the requirements of federal law." Verizon Pet. at 6. For example, Verizon's proposed amendment does not explicitly address the parties' obligations with respect to line splitting, line conditioning, and combinations, all of which were reaffirmed by the FCC in the *TRO*. MCI thus proposes additions to Verizon's proposal to make explicit these obligations.

In what follows, MCI sequentially addresses Verizon's proposals, explaining to what degree MCI agrees with these proposals, and, where MCI objects, explaining the nature of its objection and offering proposed revisions to Verizon's proposal. MCI also attaches to this pleading a red-lined markup of Verizon's proposed amendment and attachments ("MCI Revisions"), to which MCI will refer throughout the discussion below. This markup includes all of MCI's proposed revisions to Verizon's submission at this time (subject to the reservations of rights noted above), including a number of stylistic and technical edits that are not discussed in

the body of this pleading. In addition, a few of MCI's proposed changes are of a global nature; these proposed changes will be addressed below and flagged as global issues.

I. Amendment Terms and Conditions

MCI largely agrees with Verizon's proposed terms and conditions, but objects to certain wording as reflected in the attached Revisions. MCI also proposes wording that would make clear that the parties' interconnection agreement remains in full force and effect except to the extent explicitly modified by the amendment. *See* MCI Revisions to the Amendment Terms and Conditions §§ 2, 5. To ensure parity, MCI also proposes language reserving its rights, which mirrors Verizon's reservation of rights. *See id.* § 6.¹ Finally, the Department should revise the provision concerning "Stay or Reversal of the *TRO*" to ensure that the parties' original agreement remains in effect during any stay of the *TRO* or in the event that the *TRO* is vacated or reversed. *See id.* § 6.

II. General Conditions (TRO Attachment 1)

A. Change of Law (Global Issue)

MCI objects to Verizon's proposed amendment insofar as it contains unilateral change of law provisions in favor of Verizon. Specifically, MCI objects to Verizon's language in § 1.1 (which language reappears in many places elsewhere in the Attachment), which states that Verizon's obligations flow "only to the extent required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51." Verizon TRO Attachment, § 1.1. The effect of Verizon's proposed language is to create a substantive condition precedent to specific Verizon obligations, and to all of Verizon's obligations generally under the TRO Attachment, that would immediately free

¹ MCI proposes similar changes to other provisions of Verizon's proposed amendment, in order to ensure reciprocal reservation of rights. *See, e.g.,* MCI Revisions TRO Attachment §§ 1.4, 3.1.1.3

Verizon from its obligations in the TRO Attachment if a change in the referenced law were to remove the legal basis for a particular Verizon obligation.

MCI's proposed language in § 1.1 would establish the appropriate change of law framework for the entire amendment. For the same reasons, MCI proposes that Verizon's proposed § 1.3 be revised to address changes in law generally and remove Verizon's ability to unilaterally implement any such changes through its tariffs. *See* MCI Revisions §§ 1.1, 1.3. MCI's proposal would ensure that all change of law issues – those arising under the existing agreement, as well as under the amendment – would be treated equally. That is, all changes of law will be subject to the negotiation procedures set forth in this amendment, and Verizon would not be able unilaterally to assert or implement (through its tariffs or otherwise) an alleged change in law.

These changes impact many sections, including, but not limited to, MCI Revisions §§ 1.1, 1.3, 3.1.1.1, 3.1.1.2, 3.1.2.2, 3.1.3.2, 3.1.3.3, 3.3.1, 3.3.1.1, 3.3.1.2, 3.3.2, 3.4.1, 3.4.3, 3.5.1, 3.5.2, 3.5.3, 3.6.1, 3.7.1, and 3.8.1.

B. Use of Network Elements (TRO Attachment 1.2)

MCI objects to Verizon's proposed § 1.2, which would restrict MCI's use of UNEs in a manner inconsistent with the current state of federal law. *See, e.g.,* 47 C.F.R. § 51.309(a)-(d); *TRO ¶¶* 135-153, 591-592. MCI thus proposes a revised § 1.2, which would consist of three subsections that accurately implement the treatment of qualifying services and use restrictions under the *TRO* and the FCC's revised rules. *See* MCI Revisions §§ 1.2.1, 1.2.2, 1.2.3.

C. Non-Discrimination

In order to address Verizon's nondiscrimination obligations, MCI proposes adding two new subsections to the General Conditions section of Verizon's proposed TRO Attachment (§ 1),

as reflected in the attached Revisions. These subsections would bring the parties' agreement into conformity with federal law with respect to nondiscrimination, a principle that the FCC reaffirmed in the *TRO*. *See, e.g., TRO* ¶ 575 ("Pursuant to the statute, requesting carriers are entitled to nondiscriminatory access to UNE combinations on just, reasonable, and nondiscriminatory rates, terms and conditions."); *id.* ¶ 592. Specifically, MCI's proposed §§ 1.5, 1.5.1, and 1.5.2 would explicitly recognize Verizon's nondiscrimination obligations, including with respect to UNE combinations. *See* 47 C.F.R. §§ 51.307(a), 51.311(b); *TRO* ¶¶ 575, 592. In addition, MCI's proposed § 1.6 would make express Verizon's obligation to provide MCI with a demarcation point on a nondiscriminatory basis. *See* 47 C.F.R. § 51.307(b).

III. Glossary (TRO Attachment § 2)

A. Ensuring Conformity With FCC Definitions (Global Issue)

The bulk of MCI's proposed changes to Verizon's proposed Glossary would bring the definitions into conformity with the FCC's definitions in the *TRO*. Although Verizon claims that its proposed Glossary "reflects the FCC's definitions in the *Triennial Review Order*," Verizon Pet. at 7, this is not the case with respect to several of Verizon's proposed definitions. For example, MCI proposes adding language to Verizon's proposed definition of DS1 Loop to conform with the definition set forth in 47 C.F.R. § 51.319(a)(4). *See* MCI Revisions § 2.8. Similarly, MCI proposes a definition of local switching that tracks the FCC's definition of this term in 47 C.F.R. § 51.319(d)(1). *See* MCI Revisions § 2.17. Changes of this type are reflected in MCI's attached Revisions. *See, e.g.,* MCI Revisions §§ 2.8, 2.10, 2.17, 2.19, 2.22, 2.25.²

² MCI proposes removing "Tandem Switching" from the definition of Enterprise Switching, *see* MCI Revisions § 2.10, because the FCC includes Tandem Switching within its definition of Local Switching – a term already included in Verizon's proposed definition of Enterprise Switching. Similarly, MCI proposes removing Verizon's separate definition of Tandem Switching, *see* Verizon TRO Attachment § 2.23, and MCI's Revisions reflect the

MCI also propose removing from the proposed Glossary all uses by Verizon of the phrase “that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.” See, *e.g.*, Verizon TRO Attachment §§ 2.2, 2.3, 2.6, 2.7, 2.15. This language is unnecessary to a description of the affected terms, and it is confusing, as it has the potential to be read as transforming mere definitions into terms and conditions of the parties’ agreement.

Finally, specifically with respect to Verizon’s proposed definition of “Nonconforming Facility,” Verizon TRO Attachment § 2.16, MCI proposes certain critical revisions. First, to reflect that this term is a creation of the parties but creates no new legal obligations, MCI proposes that the term be denoted as “Nonconforming Elements.” See MCI Revisions § 2.20. Second, MCI proposes language clarifying the difference between changes in the legal status of elements that should be handled under the Nonconforming Elements provision and those that should be handled under the Change of Law provisions of the parties’ agreement. MCI’s proposed changes are reflected not only in the Glossary portion of the amendment, *see* MCI Revisions § 2.20, but where necessary throughout the amendment, and are further elaborated in MCI’s proposal regarding a transition period for Nonconforming Elements, *see id.* § 3.8.

B. Additional Definitions

MCI proposes that additional terms be added to the list of terms Verizon offers in its proposed Glossary. MCI’s proposed terms not only are relevant to an implementation of the *TRO*, but would update the parties’ agreement such that it is “comprehensively modified to bring [it] into accordance with the requirements of federal law.” Verizon Pet. at 6. Specifically, MCI proposes adding definitions for Combination (Revisions § 2.2), Commingling (MCI Revisions § 2.3, *see* 47 C.F.R. § 51.5; *TRO* ¶ 579); Line Splitting (MCI Revisions § 2.16, *see* 47 C.F.R.

removal of other references to this term throughout the document, *see, e.g.*, MCI Revisions § 3.4.3.

§ 319(a)(1)(ii));³ Loop (MCI Revisions § 2.18, *see* 47 C.F.R. § 319(a); *TRO* n.628); and Wire Center (MCI Revisions § 2.28).

C. Preventing Retroactive Effects (Global)

In several portions of Verizon’s proposed amendment, beginning in the proposed Glossary, Verizon proposes that the obligations of the amendment be deemed effective October 2, 2003. *See, e.g.*, Verizon TRO Attachment § 2.16 (“prior to October 2, 2003”). MCI opposes this approach, because using a past date as the amendment’s effective date would threaten to retroactively impose the terms of the agreement on MCI’s purchases under the agreement between October 2, 2003 and the date that this amendment is executed. Such a retroactive effect may not only be in conflict with the Change of Law provisions of the parties’ agreement (which call for negotiation, not immediate implementation of changes of law), but would also undermine the FCC’s recognition in the *TRO* of the value of a *de facto* transition period due to the negotiation called for by many agreements’ change of law provisions, *see, e.g.*, *TRO* ¶ 700.

Accordingly, MCI proposes deleting Verizon’s references to October 2, 2003 as the effective date of the amendment, and, where necessary, making other changes to Verizon’s proposal to make clear that the effective date of the amendment is no earlier than the date that an agreed-to amendment is executed by the parties. As reflected in the attached Revisions, MCI’s change includes, but is not limited to, MCI Revisions §§ 2.20, 3.1.1, 3.1.1.2.1, 3.1.3.2, 3.1.3.3, 3.1.3.4, 3.3.1, 3.4.1, 3.4.3, 3.5.1, 3.5.2, 3.5.3, and 3.8.1.2.

IV. Loops (TRO Attachment § 3)

A. Hi-Cap Loops (TRO Attachment § 3.1.1)

³ In general, MCI’s current agreements with Verizon do not explicitly include Line Splitting, and, in accordance with the parties’ shared goal of comprehensively modifying their agreement, MCI suggests explicitly providing for line splitting and defining that term in accordance with the language in Verizon’s Global Template Agreement.

As reflected in the attached Revisions, MCI recommends three minor substantive changes to this section. First, MCI would strike the word “written,” *see* MCI Revisions §§ 3.1.1.1 and 3.1.1.2, because written request (if, by that, Verizon means a letter or email) is not standard practice, as MCI frequently requests UNEs from Verizon by automated processes that may or may not be deemed “written.” Because these processes for ordering and provisioning are already covered in the parties’ existing agreement or pre-existing operational practices, there is no need to address or modify those procedures in this Amendment. Second, MCI would modify Verizon’s language in two minor respects to conform to FCC definitions of the relevant terms. *See* MCI Revisions §§ 3.1.1.2.1 (no mention of “DS-3 equivalents” in 47 C.F.R. § 319(a)(5)(iii), 3.1.1.3 (same with respect to “class of locations” and 47 C.F.R. § 319(a)(5)). Finally, MCI would add language to the Nonimpairment section to make clear that Verizon’s own proposed procedures to address Nonconforming Elements would be implicated by a relevant finding of nonimpairment. *See* MCI Revisions § 3.1.1.3. Adding such language is appropriate not only because Verizon’s submission recognizes the need for a transition mechanism, but also because absent such a mechanism, there would be the risk of a flash cut disconnection of MCI’s facilities – an outcome that would be disastrous.

B. FTTH Loops (TRO Attachment § 3.1.2)

MCI generally agrees with Verizon’s proposed language, subject to the minor changes indicated in the attached Revisions. Among other things, MCI’s revisions are intended to bring these provisions into conformity with 47 C.F.R. § 319(a)(3)(ii). *See* MCI Revisions § 3.1.2.2.

C. Hybrid Loops Generally (TRO Attachment § 3.1.3)

MCI generally agrees with Verizon’s proposed language, subject to the minor changes indicated in the attached Revisions. Among other things, MCI’s revisions are intended to bring

these provisions into conformity with 47 C.F.R. § 319(a)(2)(iii). *See* MCI Revisions §§ 3.1.3.2, 3.1.3.3, 3.1.3.4.

D. IDLC Hybrid Loops (TRO Attachment § 3.1.4)

As reflected in the attached Revisions, MCI recommends four substantive changes to this section. First, MCI proposes to delete section 3.1.4.2. Second, MCI proposes to modify the language in section 3.1.4.1 to reflect the *TRO*'s requirements that Verizon provide requesting CLECs with one of the following options, in the case of IDLC loops: 1) a spare copper loop, 2) a UDLC loop, or 3) any technically feasible method of unbundled access. *TRO* at ¶297. Third, MCI recommends deleting the verb "endeavor" and using the term "where available" to make clear Verizon's affirmative obligation to provide MCI with a transmission path over hybrid loops served by IDLC; Verizon cites no basis in the *TRO* or the FCC's rules for any reduced standard. *See* MCI Revisions § 3.1.4.1. Finally, MCI disagrees with Verizon's proposal that "standard provisioning intervals" and "performance standards" do not apply to loops provisioned under this section. *See* Verizon TRO Attachment § 3.1.4.3. Verizon has provided no support for its proposal that these generally applicable standards should not apply, and, accordingly, the Commission should modify this section to make clear that such standards *do* apply to Verizon's obligations described in this section. *See* MCI Revisions § 3.1.4.3.

E. Retirement of Copper Loops (MCI Revisions § 3.1.5)

Verizon's proposed amendment omits a description of its obligations with respect to the retirement of copper loops, as described in the *TRO* and the FCC's new rules. *See* 47 C.F.R. § 319(a)(3)(iii); *TRO* ¶ 283. Accordingly, MCI proposes adding a new section addressing this topic, in conformity with the FCC's description thereof. *See* MCI Revisions § 3.1.5.

F. Line Sharing and Line Splitting (TRO Attachment § 3.2, MCI Revisions § 3.2)

MCI proposes directly addressing new line sharing arrangements and the FCC's contemplated transition mechanism for these arrangements, *see* 47 C.F.R. § 51.319(a)(1)(i), in this amendment, and thus disagrees strongly with Verizon that "separate agreements" between the parties will be necessary for MCI to receive the benefit of new line sharing arrangements and the line sharing transition mechanism outlined in the *TRO*. *See* Verizon TRO Attachment § 3.2.1.1. To this end, MCI proposes a substantial modification to Verizon's proposed line sharing provisions, as reflected in the attached Revisions. Verizon proposes that a "separate, non-§ 251 wholesale arrangement," Verizon Pet. at 15, is the proper forum for the parties to address new line sharing arrangements because the FCC made a national finding of nonimpairment with respect to line sharing, and thus, according to Verizon, new line sharing arrangements are now outside the scope of interconnection agreements arbitrated under Section 251 of the Act. Not only has Verizon offered no reasoning to support this position, *see* Verizon Pet. at 14-15, but this position is inconsistent with the FCC's rules and would drain meaning from the line sharing arrangements established by the FCC in the *TRO*. MCI is concerned that Verizon will invoke its "second agreement" proposal to create an unwarranted delay in providing critically needed line-sharing arrangements. Accordingly, MCI proposes removing the "separate agreement" requirement from this section of the amendment, thereby encompassing within the amendment new line sharing arrangements established pursuant to the *TRO*. *See* MCI Revisions § 3.2.1.1. To the same end, MCI proposes adding language to this section directly addressing

Verizon's obligation to provide a Line Sharing transition mechanism and the details of that mechanism, as described by the FCC. *See id.* § 3.2.2.⁴

Unlike Verizon's Global Template Agreement, many of Verizon's contracts with MCI do not address the topic of line splitting. Thus, to ensure that Verizon's proposed amendment brings its agreement with MCI into conformity with present law, *see* Verizon Pet. at 5-6, MCI proposes including a section entitled Line Splitting, which will incorporate the terms of Verizon's Global Template Agreement. *See* MCI Revisions § 3.2.3.

Similarly, many of Verizon's contracts with MCI do not address the topic of line conditioning. Thus, to ensure that Verizon's proposed amendment brings its agreement with MCI into conformity with present law, *see* Verizon Pet. at 5-6, MCI proposes including a section entitled Line Conditioning, which will incorporate the terms of the FCC's rules regarding line conditioning. *See* MCI Revisions § 3.2.4.

V. Subloops (TRO Attachment § 3.3)

Subject to MCI's proposed changes in the attached Revisions (which address concerns already discussed about retroactivity and change of law, *see* II.A., III.C, *supra*), MCI agrees with Verizon's subloops proposal. *See* MCI Revisions §§ 3.3.1, 3.3.1.1, 3.3.1.2, 3.3.1.2.2, 3.3.2.

VI. Local Switching (TRO Attachment §§ 3.4.1-3.4.2 & 3.4.4)

Subject to MCI's proposed changes in the attached Revisions (which address concerns already discussed about retroactivity, change of law, and conformity with FCC definitions, *see* II.A., III.C, n.2, *supra*), MCI agrees with Verizon's proposal concerning local switching. *See*

⁴ In addition, MCI proposes adding language to Verizon's description of Grandfathered Line Sharing, *see* MCI Revisions § 3.2.1.2, in order to bring that section into conformity with the FCC's rules, *see* TRO ¶ 264.

MCI Revisions § 3.4.1. MCI also proposes additional language to implement the decision of the FCC in the Virginia arbitration with respect to customized routing.⁵ *See id.* § 3.4.4.

VII. Signaling/Databases (TRO Attachment § 3.4.3)

Subject to MCI's proposed changes in the attached Revisions (which address concerns already discussed about retroactivity, change of law, and conformity with FCC definitions, *see* II.A., III.C, n.2, *supra*), MCI agrees with Verizon's proposal concerning signaling and call-related databases. *See* MCI Revisions § 3.4.3.

VIII. Interoffice Facilities (TRO Attachment § 3.5)

Subject to MCI's proposed changes in the attached Revisions (which address concerns already discussed about retroactivity, change of law, and the inapplicability of written requests to this context, *see* II.A., III.C, IV.A., *supra*), MCI agrees with Verizon's proposal concerning interoffice facilities. *See* MCI Revisions §§ 3.5.1, 3.5.2, 3.5.2.1, 3.5.3, 3.5.3.1.

IX. Commingling and Combinations (TRO Attachment § 3.6)

A. Commingling (TRO Attachment § 3.6.1)

As an initial matter, it is MCI's view that its present agreement with Verizon, which is silent on the topic of commingling, permits commingling, and MCI reserves the right to argue accordingly in other proceedings and in other fora. Nonetheless, MCI agrees that it would be useful to detail Verizon's obligations with respect to commingling in the present amendment.

⁵ *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order (rel. July 17, 2002) ("Virginia Arbitration Order") at ¶¶ 532-536.

With respect to the substance of Verizon’s proposed language in TRO Attachment § 3.6.1, MCI generally agrees, but believes that certain changes are necessary to make clear the affirmative nature of Verizon’s obligations, and to conform these obligations to the FCC rules. *See* MCI Revisions § 3.6.1. In addition to stating explicitly the nature of Verizon’s obligations, MCI’s proposal makes clear that Verizon shall charge MCI for commingled UNEs and wholesale services on an “element-by-element” and “service-by-service” basis. *See id.* Moreover, MCI opposes and would delete Verizon’s proposed language concerning a “nonrecurring charge intended to offset Verizon’s costs of implementing and managing commingled arrangements,” Verizon TRO Attachment § 3.6.1, because Verizon has provided neither an adequate explanation for the necessity of such a charge, nor a cost study to support that charge. In addition, similar to MCI’s objections elsewhere, *see* IV.D., *supra*, MCI disagrees with Verizon’s proposal that “standard provisioning intervals” and “performance measures and remedies” do not apply to commingling. Verizon TRO Attachment § 3.6.1. Verizon has provided no support for its proposal that these generally applicable standards should not apply, and MCI would thus modify this section to make clear that such standards *do* apply to Verizon’s obligations described in this section. *See* MCI Revisions § 3.6.1. Finally, MCI proposes adding language to this provision recognizing that the parties’ amended agreement satisfies Verizon’s tariffs concerning commingling, and that Verizon shall not change such tariffs absent an amendment of the parties’ agreement. *See id.*

B. High-Cap Loop/Transport Combinations Eligibility Criteria (TRO Attachment § 3.6.2)

MCI has no objection in principle to most of Verizon’s proposal concerning Service eligibility criteria, but nonetheless proposes a substantial revision of the relevant provisions, as reflected in the attached Revisions, largely to ensure conformity with the FCC’s rules.

First, MCI proposes additional language to make clear, in accordance with the FCC’s rules, that eligibility criteria are applicable only to high-capacity loop and transport facilities, and not to “lower capacity EELs, other combinations, or individual network elements.” MCI Revisions § 3.6.2.1.5; *see* MCI Revisions § 3.6.2. Second, rather than merely reference the “service eligibility criteria set forth in 47 C.F.R. § 51.318,” Verizon TRO Attachment § 3.6.2.1.5, MCI would incorporate these service eligibility criteria explicitly, for the sake of clarity and completeness, *see* MCI Revisions § 3.6.2.2 (and subsections). MCI’s proposed language regarding service eligibility criteria is grounded not only in 47 C.F.R. § 51.318, but also in *TRO* ¶¶ 602-611, and MCI’s Revisions reflect other minor changes to Verizon’s proposed § 3.6.2 (and subsections) based on the language of the FCC’s rules. Third, and similarly, MCI proposes adding a new subsection making express the FCC’s ruling, *see TRO* ¶ 577, that no terms and conditions other than those described in the amendment may be imposed by Verizon on MCI’s purchases of EELs. *See* MCI Revisions ¶ 3.6.2.4. And, in the same vein, MCI proposes revisions to Verizon’s proposed language regarding high-capacity EEL auditing; this language conforms with the FCC’s discussion of such auditing in *TRO* ¶¶ 625-629.

In addition to these changes, MCI proposes moving Verizon’s provisions involving conversions, *see* Verizon TRO Attachment §§ 3.6.2.3-3.6.2.6, to a freestanding section, *see* MCI Revisions § 3.9. MCI believes that it is necessary to remove the conversions provisions from their present location (within the EELs discussion), because conversions are not only applicable to EELs, but can affect other UNEs, such as stand-alone loops. MCI discusses this proposed new section below. *See* XII, *infra*.

C. Combinations (MCI Revisions § 3.6.3)

Verizon's proposed § 3.6 is entitled "Commingling and Combinations," but does not contain provisions detailing the parties' obligations with respect to combinations. Moreover, the parties' current agreement is outdated with respect to combinations, and an express description of these obligations would bring the parties' agreement into conformity with federal law. Accordingly, MCI proposes the addition of new provisions, *see* MCI Revisions § 3.6.3 (and subsections) tracking the FCC's relevant rules, *see* 47 C.F.R. § 51.315(a)-(f); *TRO ¶¶* 573-574.

X. Routine Network Modifications (TRO Attachment § 3.7)

MCI approves of Verizon's approach of treating loops and transport together, with respect to routine network modifications. However, MCI proposes several revisions to Verizon's General Conditions provision, *see* MCI Revisions § 3.7.1, to bring the language of that provision into conformity with the relevant FCC rules, *see* 47 C.F.R. §§ 319(a)(8), (e)(5). In addition, as it has objected elsewhere, *see* IV.D., IX.A., *supra*, MCI objects to Verizon's proposal that "standard provisioning intervals" and "performance measures and remedies" do not apply to commingling. Verizon TRO Attachment § 3.7.2. Verizon has provided no support for its proposal that these generally applicable standards should not apply, and MCI would thus modify this section to make clear that such standards *do* apply to Verizon's obligations described in this section. *See* MCI Revisions § 3.7.2.

XI. Non-Conforming Elements (TRO Attachment § 3.8)

A threshold concern with respect to non-conforming elements is the proper definition thereof (and distinguishing such elements from legal changes that implicate the Change of Law provisions of the parties' agreement). MCI has discussed this issue above. *See* III.A, *supra*. With respect to Verizon's proposed transitional provisions for such elements, MCI has proposed significant revisions. *See* MCI Revisions § 3.8 (and subsections). These revisions generally

accept Verizon's proposal in substance, but would explicate the transition mechanism in greater detail. In essence, MCI's proposed changes fall into three categories.

First, with regard to switching, MCI proposes minor changes to Verizon's proposal that would ensure that the time periods described both would track the effective date of the amendment and would permit MCI to complete certain tasks ahead of schedule. *See* MCI Revisions §§ 3.8.1.1, 3.8.1.2. In addition, MCI has proposed language that would make clear what the FCC rules contemplate: that mass market switching would be subject to the rates, terms and conditions of the parties' agreement during the transition period. *See id.* § 3.8.1.1.

Second, concerning "Other Nonconforming Elements," Verizon TRO Attachment § 3.8.2, MCI proposes a substantial expansion of this section, in order to set forth clear and detailed options and procedures upon a finding that MCI (or CLECs generally) is no longer impaired with respect to a particular location, route, or geographic market. Of particular significance, MCI's modifications would expressly provide for the option of transferring a service from Verizon's facilities to that of MCI or another CLEC, *see* MCI Revisions § 3.8.2.2.5. This option concerns a reality – Verizon-to-CLEC transitions – that the parties will necessarily encounter upon findings of non-impairment, because the entire basis for a nonimpairment finding is that the CLEC should be able to provide the element itself, or that adequate competitive supply exists with respect to a particular location, route, or market. Thus, MCI explicates a procedure for transferring from Verizon to a CLEC that will place appropriate incentives on the parties to complete efficiently such transitions. In addition, MCI proposes language detailing the procedures and requirements for the various types of conversions recognized in Verizon's proposal. *See* MCI Revisions §§ 3.8.2.2.1-3.8.2.2.4, 3.8.2.3. Finally, MCI proposes building a degree of flexibility into the transition deadlines, based upon the scope

of the transition and the use of automation, *see id.* §§ 3.8.2.1, 3.8.2.2, and specifies the details that Verizon should include in a “Transition Notice,” *id.* § 3.8.2. Though lengthy, MCI’s proposed changes to TRO Attachment § 3.8.2 are largely consistent with Verizon’s treatment of nonconforming elements, and merely add the detail needed to ensure that transitions will happen smoothly, predictably, and with minimal debate about the meaning of the parties’ agreement.

Finally, MCI suggests minor changes and clarifications to Verizon’s proposal regarding substitute services, as reflected in the attached Revisions. *See* MCI Revisions § 3.8.3.

XII. Conversions (MCI Revisions § 3.9)

As MCI has explained, *see* IX.B., *supra*, it proposes to treat conversions in a standalone section, because various UNEs may be subject to conversions. At present, MCI and Verizon still need to finalize and implement a conversion process that meets the needs of both parties and permits conversion to proceed consistent with the FCC’s rules. Accordingly, MCI has suggested modifications to Verizon’s language to permit the parties to move forward processing conversions on a manual project basis at this time until such time as an automated process is agreed-upon and implemented, *see* MCI Revisions § 3.9 (and subsections). In addition, MCI has proposed additional language intended to bring the conversion provisions into conformity with the applicable FCC rules, *see* 47 C.F.R. § 51.316; *TRO* ¶¶ 585-589.

XIII. Pricing Exhibit

With respect to Verizon’s Pricing Exhibit to the TRO Attachment and all other references in Verizon’s proposed amendment to this Pricing Exhibit, MCI expressly reserves its rights to dispute the prices proposed therein, and nothing in this pleading or MCI’s Revisions markup of Verizon’s proposal should be read to indicate MCI’s agreement to Verizon’s proposed prices. Furthermore, MCI requests that the Department order Verizon to produce cost studies in support

of the prices it has proposed to the Department in this proceeding. MCI's position is that new prices may take effect only after Verizon has produced cost studies to support its proposed rates and the Department has approved the proposed rates, and that it would be inequitable and too uncertain to leave pricing decisions within Verizon's discretion as it "develop[s] such Charges" – as Verizon's proposal contemplates, *see* Verizon Pricing Exhibit § 1.2.

Reflecting these overarching concerns, MCI proposes a modest restructuring and revision of the Pricing Exhibit. First, MCI proposes that § 1.2 be revised to indicate that a finalized pricing attachment will include only Department-approved prices, and that subsequent revisions to these prices by the Department will be automatically incorporated into the parties' agreement. *See* MCI Pricing Revisions § 1.2. In order to prevent Verizon from having unilateral control over prices – which would be patently inequitable – MCI proposes deleting Verizon's language providing for Verizon's sole control over pricing. *See id.* Second, MCI revises § 1.3, both to remove language proposed by Verizon that would be redundant in light of MCI's revised § 1.2, as well as to provide a process for negotiation and litigation of prices that have not yet been set by the Department. *See id.* § 1.3.⁶

**MCIMETRO ACCESS TRANSMISSION SERVICES LLC,
BROOKS FIBER COMMUNICATIONS OF
MASSACHUSETTS, INC., MCI WORLDCOM
COMMUNICATIONS, INC., MCI WORLDCOM
COMMUNICATIONS, INC. AS SUCCESSOR TO
RHYTHMS LINKS INC., AND INTERMEDIA
COMMUNICATIONS, INC.**

By:_____

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Dated: March 15, 2004

⁶ *See* Virginia Arbitration Order at ¶¶ 619-621.